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3 **UNITED STATES DISTRICT COURT**  
4 **DISTRICT OF NEVADA**

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6 Fisk Electric Company,

7 Plaintiff/Counterclaim  
8 Defendant,

9 v.

10 Archer Western Contractors, LLC,

11 Defendant/Counterclaim  
12 Plaintiff,

13 v.

14 Safeco Insurance Company of America,

15 Counterclaim Defendant

16 Archer Western Contractors, LLC, formerly Archer  
17 Western Contractors, Ltd.,

18 Third Party Plaintiff,

19 v.

20 Gallagher-Kaiser Corp., Arch Insurance Company,  
21 The Erection Company, Inc., and Travelers  
Casualty and Surety Company of America,

22 Third-Party Defendants.

Case No. 2:20-cv-02341-GMN-DJA

**Order**

23 This matter is before the Court on the parties' stipulation for inadvertent disclosures and  
24 clawback (ECF No. 81). The parties request that the Court enter an order to govern the potential  
25 inadvertent exchange of privileged information. The parties include a line, taken from Federal  
26 Rule of Civil Procedure 26(b)(5)(B) that they "may promptly present the information to the Court  
27 under seal for a determination of the [privilege or protection] claim." However, the parties fail to  
28 state the governing standard for filing documents under seal with the Court. This order reminds  
counsel that there is a presumption of public access to judicial files and records. A party seeking

1 to file a confidential document under seal must file a motion to seal and must comply with the  
 2 Ninth Circuit's directives in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir.  
 3 2006) and *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092 (9th Cir. 2016).

4 **IT IS THEREFORE ORDERED** that the parties' stipulation for inadvertent disclosures  
 5 and clawback (ECF No. 81) is **granted subject to the following modifications**:

- 6 • The Court has adopted electronic filing procedures. Attorneys must file  
 7 documents under seal using the Court's electronic filing procedures. *See* Local  
 8 Rule IA 10-5. Papers filed with the Court under seal must be accompanied with a  
 9 concurrently-filed motion for leave to file those documents under seal. *See* Local  
 10 Rule IA 10-5(a).
- 11 • The Court has approved the instant stipulation to facilitate discovery exchanges,  
 12 but there has been no showing, and the Court has not found, that any specific  
 13 documents are secret or confidential. The parties have not provided specific facts  
 14 supported by declarations or concrete examples to establish that a protective order  
 15 is required to protect any specific trade secret or other confidential information  
 16 pursuant to Rule 26(c) or that disclosure would cause an identifiable and  
 17 significant harm.
- 18 • All motions to seal shall address the standard articulated in *Ctr. for Auto Safety*  
 19 and explain why that standard has been met. 809 F.3d at 1097.
- 20 • Specifically, a party seeking to seal judicial records bears the burden of meeting  
 21 the "compelling reasons" standard, as previously articulated in *Kamakana*. 447  
 22 F.3d 1172. Under the compelling reasons standard, "a court may seal records only  
 23 when it finds 'a compelling reason and articulate[s] the factual basis for its ruling,  
 24 without relying on hypothesis or conjecture.'" *Ctr. for Auto Safety*, 809 F.3d at  
 25 1097. (quoting *Kamakana*, 447 F.3d at 1179). "The court must then  
 26 'conscientiously balance[ ] the competing interests of the public and the party who  
 27 seeks to keep certain judicial records secret.'" *Ctr. for Auto Safety*, 809 F.3d at  
 28 1097.

- 1 • There is an exception to the compelling reasons standard where a party may satisfy  
2 the less exacting “good cause” standard for sealed materials attached to a  
3 discovery motion unrelated to the merits of the case. *Id.* “The good cause  
4 language comes from Rule 26(c)(1), which governs the issuance of protective  
5 orders in the discovery process: ‘The court may, for good cause, issue an order to  
6 protect a party or person from annoyance, embarrassment, oppression, or undue  
7 burden or expense.’” *Id.* (citing Fed.R.Civ.P. 26(c)). “For good cause to exist, the  
8 party seeking protection bears the burden of showing specific prejudice or harm  
9 will result if no protective order is granted.” *Phillips v. General Motors*, 307 F.3d  
10 1206, 1210-11 (9th Cir. 2002).
- 11 • The labels of “dispositive” and “nondispositive” will not be the determinative  
12 factor for deciding which test to apply because the focal consideration is “whether  
13 the motion is more than tangentially related to the merits of a case.” *Ctr. for Auto*  
14 *Safety*, 809 F.3d at 1101.
- 15 • The fact that the Court has entered the instant stipulated protective order and that a  
16 party has designated a document as confidential pursuant to that protective order  
17 does not, standing alone, establish sufficient grounds to seal a filed document. *See*  
18 *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1133 (9th Cir. 2003); *see*  
19 *also Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992). If  
20 the sole ground for a motion to seal is that the opposing party (or non-party) has  
21 designated a document as confidential, the designator shall file (within seven days  
22 of the filing of the motion to seal) either (1) a declaration establishing sufficient  
23 justification for sealing each document at issue or (2) a notice of withdrawal of the  
24 designation(s) and consent to unsealing. If neither filing is made, the Court may  
25 order the document(s) unsealed without further notice.

- To the extent any aspect of the stipulated protective order may conflict with this order or Local Rule IA 10-5, that aspect of the stipulated protective order is hereby superseded with this order.

IT IS SO ORDERED.

DATED: September 16, 2021



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DANIEL J. ALBREGTS  
UNITED STATES MAGISTRATE JUDGE